

Restaurant Depot and Local 418, International Brotherhood of Teamsters, AFL-CIO, Petitioner. Case 22-RC-11507

August 27, 1998

ORDER AFFIRMING DISMISSAL

BY CHAIRMAN GOULD AND MEMBERS FOX, LIEBMAN, HURTGEN, AND BRAME

The National Labor Relations Board has considered the Petitioner's request for review of the Regional Director's administrative dismissal of the instant petition. (Relevant portions of the Regional Director's dismissal letter are attached as an appendix.) The request for review raises no substantial issues warranting reversal of the Regional Director's action. Accordingly, the dismissal is affirmed. In affirming the Regional Director, we note that on May 12, 1998, the Regional Director approved an informal settlement agreement in Case 22-CA-22588 between the Employer and Local 348-S, United Food and Commercial Workers Union, the incumbent Union, pursuant to which the Employer has agreed to bargain and apply the existing collective-bargaining agreement to the Employer's drivers. In these circumstances, the petition is properly dismissed. See *Douglas-Randall, Inc.*, 320 NLRB 431 (1995).

MEMBERS HURTGEN AND BRAME, dissenting.

We would process the petition for the reasons set forth in the dissent in *Douglas-Randall*, 320 NLRB 431 at 435 (1995). We recognize that the informal settlement agreement requires the Employer to cover the disputed employees under the contract with Local 348-S. However, the settlement agreement is not an adjudication or an admission that these employees are in fact under that contract. Further, the Petitioner was not a party to that settlement. And, the petition was filed before the settlement. In these circumstances, there is no basis for dismissal of the petition.¹

¹ The contract is ambiguous with respect to whether the parties intended to cover the disputed employees. The majority has not resolved that issue, and neither have we.

APPENDIX

This case, petitioning for an investigation and determination of representative pursuant to Section 9(c) of the National Labor Relations Act, has been carefully investigated and considered.

By its petition, Teamsters Local Union No. 418, Production, Maintenance and Allied Workers seeks certification as the exclusive majority representative of all drivers employed by the Employer at its South Hackensack New Jersey facility.

In a separate administrative investigation of alleged unfair labor practice charges filed against the Employer by the incumbent union, Local 348-S, UFCW, in Case 22-CA-22588. I concluded that the drivers sought by your petition were part of the unit covered by the existing contract between the Employer and Local 348-S and that the Employer had refused to recognize and bargain with Local 348-S in violation of Section 8(a)(1) and (5) of the Act, by failing to apply the contract to the drivers. The investigation of that matter revealed that the Employer and Local 348-S, are parties to a Memorandum of Agreement effective by its terms from September 12, 1996, to September 11, 2000 which covers a unit of "all of its employees—excluding office and clerical employees, outside salesmen, executives, supervisors and guards," at the South Hackensack facility. As drivers fall within the recognition language of that agreement and where the investigation further revealed that the Employer hired three drivers between June and October 1997 without notifying the Union as to their hire nor applying the terms of the collective-bargaining agreement to those employees, I have concluded that the investigation revealed sufficient evidence to establish the alleged violations and, absent settlement, a complaint will issue.

Having concluded that the drivers are part of the unit covered by the existing contract between Local 348-S and the Employer, I find that the petition is untimely filed and the contract acts as a bar to the processing of the petition. It is well settled that a valid collective-bargaining agreement bars processing of a representation petition for as much of its terms as does not exceed 3 years. *General Cable Corp.*, 139 NLRB 1123 (1962). A representation petition may only be processed if filed more than 60 days, but less than 90 days, prior to the expiration date of a collective bargaining agreement or if filed after an agreement's expiration, but prior to the execution of a renewal agreement. *Leonard Wholesale Meats, Inc.*, 136 NLRB 1000 (1962). The petition here was filed on January 15, 1998, and is, therefore, untimely filed. In these circumstances neither deferral to AFL-CIO Article XXI proceedings, nor further proceedings in this matter appear warranted, and I am, therefore, dismissing the petition.